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June 13, 2005

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: WC Docket No. 03-251

Dear Ms. Dortch:

Attached please find the comments of WordNet Telecommunications, Inc., which are being filed in response to the Federal Communications Commission's Notice of Inquiry in WC Docket No. 03-251. This material is being filed electronically today for inclusion in the record of the above-captioned proceeding.

Best Regards,

A handwritten signature in black ink, appearing to be 'J. Moskowitz', written over the printed name.

James N. Moskowitz

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
BellSouth Telecommunications, Inc.	)	
Request for Declaratory Ruling that	)	
State Commissions May Not Regulate	)	WC Docket No. 03-251
Broadband Internet Access Services by	)	
Requiring BellSouth to Provide Wholesale	)	
or Retail Broadband Services to Competitive	)	
LEC UNE Voice Customers	)	

**COMMENTS OF  
WORLDNET TELECOMMUNICATIONS, INC.**

WorldNet Telecommunications, Inc. ("WorldNet" or "Company") submits the following comments in response to the Federal Communications Commission's ("Commission") Notice of Inquiry seeking comment on issues relating to the competitive consequences of incumbent local exchange carrier ("incumbent LEC") bundling legacy services with new services.<sup>1</sup> WorldNet files these comments out of a concern that the bundling practices of incumbent LEC providers have the potential, if left unchecked, to significantly damage the development of robust competition, particularly in areas such as Puerto Rico where competition has been slow to take hold. In order to prevent further harm to competition caused by aggressive tying arrangements involving incumbent LEC legacy services and new services, the Commission must act quickly to adopt rules and standards preventing incumbents from "locking in" large business customers through the use of carefully tailored service bundles established through multi-year contracts.

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<sup>1</sup> *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, WC Docket No. 03-251, Memorandum Opinion and Order and Notice of Inquiry (rel. March 25, 2005).

## **I. Introduction & Summary**

Headquartered in San Juan, Puerto Rico, WorldNet is a relatively small company, currently employing about 80 people. WorldNet has no affiliation with any other company and operates only in Puerto Rico. WorldNet currently provides local and long distance telephone and data services to enterprise customers throughout Puerto Rico. Initially, WorldNet provided its services exclusively through resale. However, WorldNet's business plan has always anticipated migrating its resale services to its own facilities. WorldNet is committing the extensive financial and strategic resources necessary to execute a facilities-based deployment plan and is scheduled to deploy its first facilities in the Fall of 2005. However, resale of PRTC services remains an important mode of competitive entry for WorldNet and allows it to aggregate the customers necessary to justify the investments required for the Company to migrate to its own facilities.

## **II. The Commission Should Place Restrictions on Incumbent LECs' Ability to "Lock-in" Business Customers**

WorldNet believes that one of the central harms posed by incumbent LECs' bundling their legacy services with new services involves the use of very narrowly tailored bundling arrangements to win back and "lock-in" large enterprise customers.<sup>2</sup> While under normal circumstances this can be a perfectly acceptable business practice, the incumbent LEC in Puerto Rico, Puerto Rico Telephone Company ("PRTC"), has used these arrangements to leverage its monopoly power over last mile facilities. Using this power, PRTC has become very effective in winning back enterprise customers and preventing them from ever taking services from another carrier. If a customer were to take services contained in the bundle from a competitor, it would still have to continue paying PRTC for these services even where they were not longer used.

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<sup>2</sup> See *WorldNet Telecom. V. Puerto Rico Tel. Co., Inc.*, Case No. JRT-2003-Q-0143 (complaint filed by WorldNet against PRTC for unlawful use of contract tariffs).

In these circumstances, the bundled arrangements in question contain both regulated and unregulated communications services. Customers are effectively locked into the three-year term of these tariffs by a large termination charge, which is not based upon the costs actually incurred by PRTC in setting up the contracts.<sup>3</sup> Further, each individual service within the bundle of services is locked into the bundle by a minimum annual revenue commitment, which the customer must pay even if it is not taking all of those services.<sup>4</sup> In this way, the mutually reinforcing termination penalty and revenue commitments force a customer to stay with PRTC and pay the full amount for every particular service within the bundle, even if it is no longer using some of these services. This effectively locks-in the customer for each service within the contract tariff as well as into the contract tariff as a whole.

In practice, PRTC has negotiated these contracts by first requiring a confidentiality agreement that effectively prevents the customer from negotiating simultaneously with PRTC and any other supplier for the same bundle of services.<sup>5</sup> Then, once the contractual arrangement is made and the contract tariff filed, no other competitor can resell the tariff to supply other customers because the tariff is designed around the unique characteristics of a specific customer.<sup>6</sup> In addition, because the contract includes unregulated services, if a service bundle was to be resold, no resale customer could meet the minimum annual revenue commitments on the remaining regulated service portion of the bundle because the unregulated portion accounts for a substantial amount of the cost of the entire bundle.

The minimum annual revenue commitment also prevents competitors from offering the PRTC bundled service customers a better price on any individual service in the contract tariff.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

This is because even when the competitor offers a better price, the customer has to pay the incumbent for the service anyway in order to meet its annual revenue commitment. As a result, once the customer has been “locked-in,” there is no incentive for it to even consider a competing service. This is true even if the competing service is superior in terms of price, quality or features. Finally, at the end of the contract term, the incumbent simply re-imposes the “confidentiality” requirement during the renegotiation period and locks in the customer for an additional three years and the cycle repeats.

In this way, incumbent such as PRTC are able to tie their legacy networks and services to new services in such a way as to thwart competition for both. This concern is magnified by the impending Verizon - MCI and SBC - AT&T mergers. These mergers will permit Verizon and SBC to use these bundling techniques to lock-in large segments of the market for enterprise customers. Accordingly, WorldNet believes that the Commission should restrict incumbents from entering into arrangements that effectively lock-in enterprise customers for more than a single year term. Specifically, the Commission should require that all bundled service arrangements be made available for resale for the life of the contract, allow the resale of both regulated and unregulated portions of the service bundle (as discussed below), require that any termination penalties be based upon recouping the costs of setting up the services, and require the pro-rating by service of any minimum revenue requirement. These conditions will help mitigate the impact of anti-competitive bundling practices and will provide competitors with a reasonable ability to compete for large enterprise customers on a basis of price, service and innovation.

### **III. The Commission Should Require Incumbents to Make Bundled Service Packages Available For Resale**

In a sales strategy related to its contract tariffs, PRTC provides a number of bundled packages to its retail customers.<sup>7</sup> PRTC uses the fact that a service bundle offered to enterprise customers contains either regulated services provided by an affiliate (rather than directly by PRTC), or unregulated services, as an excuse for not making the entire package available to competitors for resale. In essence, PRTC uses these other services to “inoculate” a service package from resale. WorldNet is concerned that, taken together with the lock-in tactics discussed above, these bundles pose a serious threat to competition and significantly reduce the viability of resale as a meaningful mode of competitive entry.

Congress enacted the Telecommunications Act of 1996 (“1996 Act”)<sup>8</sup> to promote and encourage competition in the local telecommunications market by “lifting the shackles of monopoly regulation.”<sup>9</sup> Accordingly, the 1996 Act imposes certain duties upon incumbent LECs. Of particular importance to this case is the incumbent LECs’ “resale” obligation, which requires incumbent LECs to provide their complete package of retail services to competitors.<sup>10</sup> Competitors may compete with the incumbent LECs by reselling these services to their own customers.<sup>11</sup> The resale provisions of the 1996 Act further forbid “unreasonable or discriminatory conditions or limitations” on resale.<sup>12</sup>

In implementing this statutory resale requirement, Commission concluded that “[r]esale will be an important entry strategy both in the short term for many new entrants as they build out

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<sup>7</sup> See <[http://www.telefonicaprc.com/prtc/channelArticle/0,1044,2153\\_2638072\\_2690650,00.html](http://www.telefonicaprc.com/prtc/channelArticle/0,1044,2153_2638072_2690650,00.html)> (visited Apr. 25, 2005).

<sup>8</sup> 47 U.S.C. §§ 151 et seq.

<sup>9</sup> H.R. Rep. No. 104-204 at 48 (1995), *reprinted in* 1996 U.S.C.C.A.N. 10, 11.

<sup>10</sup> 47 U.S.C. § 251(c)(4).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

their own facilities and for small businesses that cannot afford to compete in the local exchange market by purchasing unbundled network elements or by building their own networks.”<sup>13</sup>

Accordingly, consistent with the pro-competitive intent of the 1996 Act, the Commission has appropriately determined that “the plain language of the 1996 Act requires that the incumbent LEC make available at wholesale rates retail services that are actually composed of other retail services, *i.e.*, bundled service offerings.”<sup>14</sup>

The ability to resell the incumbent LECs’ services is an especially critical mode of competitive market entry in Puerto Rico due to the poor state of competition in the market. It has become even more critical following the FCC’s *Triennial Review Remand Order*,<sup>15</sup> which drastically reduced the availability of UNEs necessary for market entry. Today, the telecommunications market in Puerto Rico lags far behind the rest of the country in terms of competitive development. Indeed, whatever the state of competition in the rest of the country, the conditions supporting robust, irreversible facilities-based competition do not exist in Puerto Rico. Although it has been over nine years since the passage of the 1996 Act, little progress has been made in introducing facilities-based competitive telecommunications services in Puerto Rico. Rather, as the Telecommunications Regulatory Board of Puerto Rico found a little over one year ago, the telecommunication market in Puerto Rico is “more embryonic than corresponding markets on the mainland”<sup>16</sup> and competitors attempting to gain access to the critical incumbent LEC facilities necessary for the provision of ubiquitous facilities-based

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<sup>13</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, 15516 (1996). (“*Local Competition Order*”).

<sup>14</sup> *Local Competition Order*, 11 FCC Rcd. at 15937.

<sup>15</sup> *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290, Order on Remand (rel. Feb. 4, 2005).

<sup>16</sup> *Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico for Enterprise Switching Impairments in Defined Puerto Rico Markets*, CC Doc. Nos. 01-338, 96-98, 98-147, Order and Notice of Proposed Rulemaking, FCC 04-179, p. 5 (filed December 30, 2003).

telecommunications services must contend with an incumbent with a "consistent track record of being unprepared, uninterested, and incapable of providing wholesale services as and when required or promised."<sup>17</sup>

With Verizon and SBC poised to merge with their largest competitors and integrate MCI and AT&T's extensive current client base and Internet and long-distance infrastructure into their own operations, these incumbents will have an unprecedented ability to offer a wide variety of bundled service offerings that include regulated and unregulated services from various affiliates. In order to preserve resale as a meaningful mode of competitive entry, the Commission must consider requiring that incumbent LECs resell bundled service offerings in their entirety where they contain telecommunications components. This will ensure that resale remains a viable option for competitive entry.

## **V. CONCLUSION**

The Commission needs to act to lessen the anticompetitive effects that incumbent bundling practices have on the market for enterprise customers by restricting incumbent carrier's ability to "lock-in" large business customers through the use of carefully tailored multi-year "contract tariffs" and to avoid its resale obligations by bundling all of its enterprise telecommunications services with unregulated services and services provided by affiliates. Specifically, the Commission should require that all bundled service arrangements be made available for resale for the life of the contract, allow the resale of both regulated and unregulated portions of the service bundle (as discussed below), require that any termination penalties be based upon recouping the costs of setting up the services, and require the pro-rating by service of any minimum revenue requirement. These conditions will help mitigate the impact of anti-

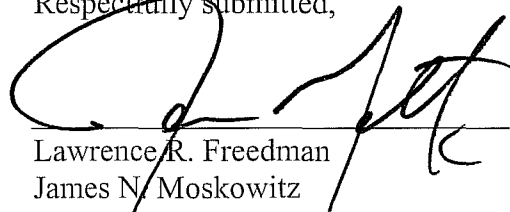
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<sup>17</sup> *Waiver Petition* at 23.



competitive bundling practices and will provide competitors with a reasonable ability to compete for large enterprise customers on a basis of price, service and innovation.

Respectfully submitted,

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June 13, 2005

JNM/C